REMARKS

Entry of this amendment and reconsideration of this case as so amended is requested. By this amendment Applicant has corrected informalities in claims 7-9 noted by the Examiner. Claims 1-10 remain in the case.

The Examiner objected to claims 8 and 9 because of informalities. The Examiner noted typographical errors regarding claim dependencies of claims 8 and 9. In reviewing the claims Applicant noted an additional typographical error of the same nature in claim 7. Therefore claim 7 has been amended to depend from claim 6; claim 8 has been amended to depend from claims 6 or 7; and claim 9 has been amended to depend from claim 8. In view of these amendments the Examiner's objection to claims 8 and 9 is now deemed to be moot.

The Examiner rejected claims 1-3 and 6-10 under 35 U.S.C. 102(e) as being anticipated by McElhaney, Jr. et al ("McElhaney"), and claims 4 and 5 under 35 U.S.C. 103(a) as being unpatentable further in view of Warren. Applicant respectfully traverses these conclusions by the Examiner.

Applicant's claimed invention is an arrangement whereby a protocol layer from a multilayer protocol stack, such as the OSI reference model of related functions that are needed at each end of a communication when a message is sent from one party to another party in a network, may be tested without the communication having to pass through the physical layer, i.e., a first layer. The present invention allows a protocol tester or test apparatus to directly access any layer above the first layer and communicate solely

with that layer by providing test data to that layer and receiving response data from that layer. In other words the circuit or apparatus for testing a communication system has a port that allows communication by the test apparatus directly with any layer that is higher than the first layer of the functional layers that make up the communication system since protocol testers typically do not provide physical layer testing. Therefore for the purposes of the present invention it is sufficient to connect a protocol tester to an internal interface of a real device under test, such as a Utopia interface for testing an ATM environment or a POS-PHY interface. Such a test interface for protocol testers avoids an expensive physical interface. Thus such a test interface may be integrated into communication chips of network processors or switching engines.

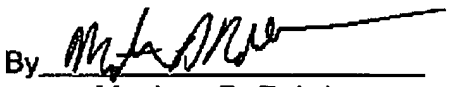
In contradistinction to Applicant's claimed invention McElhaney teaches a network fault analysis tool that communicates with a router or web site (Figs. 2-4, elements 110, 210, 310) via the Internet (Fig. 1, element 20). In other words McElhaney communicates with the router or web site via the physical layer, regardless of which protocol layer is being analyzed at the subject router or web site, and does not "allow communication . . . directly with any layer that is higher than a first [physical] layer . . . without the communication previously having to pass through the first layer" as is recited in claims 1 and 6. Therefore McElhaney is representative of the prior art discussed by Applicant and requires the potentially expensive physical interface that is avoided by the presently claimed invention. McElhaney neither teaches nor suggests to one of ordinary skill in the art the direct communication of the test apparatus with a higher protocol layer of the device under test as recited by Applicant in claims 1 and 6, and such claims together with claims 2-5 and 7-

10 dependent therefrom are deemed to be allowable as being neither anticipated nor rendered obvious to one of ordinary skill in the art by McElhaney, either singly or in conjunction with Warren.

In view of the foregoing amendment and remarks entry of this amendment and allowance of claims 1-10 are urged, and such action and the issuance of this case are requested. Should the Examiner maintain the rejection of this case, entry of this amendment is requested as placing the claims in better form for appeal by removing obvious typographical errors without changing the substance and scope of the claims.

Respectfully submitted,

JENS GRIESWALD

By 

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